

**National Shipper Advisory Committee
Committee Meeting
Minneapolis, Minnesota
August 9, 2023
1:00 pm Central Time**

Meeting Minutes

Introduction and Determination of Quorum

Dylan Richmond, the Designated Federal Officer (DFO) for the FMC, called the meeting to order and gave notice that the meeting is being recorded. Committee members were reminded that antitrust laws apply to them and that they cannot speak on behalf of the committee, the FMC, or the federal government outside of an official meeting of the NSAC. The DFO confirmed a quorum.

Remarks from NSAC Leadership

The Committee Chair, Michael Symonanis, thanked NSAC members for their work so far and for their continuing commitment and support. In the meeting today the Committee will review its work so far and will discuss upcoming work the Committee will engage on.

Kenneth O'Brien, Committee Vice Chair, stated there is now a state of calm in the industry now compared to the past few years. This should be seen as an opportunity to redouble the Committee's efforts. One question he has considered recently is, are we ready for the next disruption? The Vice Chair posited that to take a step back now is the wrong thing to do, and that the Committee should press forward with alacrity. He expressed his hope for a good discussion in today's meeting.

NSAC Mission and Focus

The Committee Chair reviewed the mission and focus of the NSAC for the benefit of the public. Highlights from his presentation are as follows:

- NSAC membership is made up of 12 importers and 12 exporters, as required by Congressional statute.
- Members are mostly from big, well-recognized brands, although contain smaller shippers as well.
- The purpose of the Committee is to act solely in an advisory capacity to the FMC on policies relating to competitiveness, reliability, integrity, and fairness of the ocean shipping supply chain.
- The current focus of the NSAC's work is on issues within the shipping community related to chassis, data, fees and surcharges which has led to the creation of subcommittees to discuss each topic.
- The results of the Committee's work are published on their website: [National Shipper Advisory Committee - Federal Maritime Commission - Federal Maritime Commission \(fmc.gov\)](https://www.fmc.gov/national-shipper-advisory-committee)

- NSAC is currently scheduled to terminate on September 30th, 2029, per the Congressional statute.

The Chair encouraged members of the public to participate in meetings or send written comments to nsac@fmc.gov.

Update from Commissioner Rebecca Dye

Commissioner Dye opened her remarks by sharing appreciation for Mr. O'Brien's comments, as she said this is the time to innovate. She stated that today's problems were not caused by COVID, which instead exacerbated the industry's challenges. Instead, supply chain bottlenecks have endured because no one supply chain actor owns them. She also emphasized her concern that contractual agreements between carriers and shippers cause mutual misunderstanding which raises questions about what these documents are worth.

Talking on data and data provisioning, she said much is being discussed in Washington, on the NSAC, and by General Lyons' team. The Commissioner shared that the General would have a pilot program coming out soon.

Commissioner Dye discussed her recent proposal to form teams that will develop innovative solutions for the industry. She shared that the best team members are often leaders of the industry, and that it is best to foster a collaborative environment where everyone discusses issues and engage "across the table" as opposed to round table discussions. Her proposal focuses on three key issues at port terminals:

1. Empty Container Return
2. Early Return Dates (ERD)
3. Container Pick-up

Commissioner Dye stated that the container return process needs to be clear and predictable. According to her, containers should be returned to the terminal from which it was taken, or to another location upon mutual agreement between the parties. Otherwise, she noted that sufficient notice must be given by the carrier. Commissioner Dye noted that this process was originally developed by the New York Motor Carrier community.

Regarding ERDs, she stated that working towards a solution requires clarifying all problems around ERDs. Commissioner Dye thanked the Committee for their work in this area.

In responding to comments from NSAC members, Commissioner Dye stated that the items in her proposal have to be refined before they can be turned into action. Her plan is to launch pilot projects in the ports of Los Angeles, Long Beach, and New York-New Jersey in the fall. She expects there to be some hiccups with industry participants as they get the process down and work out any issues that arise.. She underscored that there is a clear reward for business and users for getting this right.

Commissioner Dye said she would get back to Committee members on what measures they and other shippers could take to help the initiative as they consider implementation in the future. She reiterated this will take time, as they need to ensure this process works, while sympathizing with members of the shipping community who navigate these issues on a daily basis.

Commissioner Dye clarified that her comments today do not represent the Commission and are made in her personal capacity. Furthermore, she stated that the FMC is fully focused on the implementation of Ocean Shipping and Reform Act of 2022, including engaging on multiple rulemakings mandated by that legislation.

Data/Visibility Subcommittee Discussion

Morgan Jackson of the Data/Visibility Subcommittee reviewed the timeline of recommendations the Subcommittee has put forward thus far. On the vessel level data recommendation, she stated that any data shared regarding the vessel name and estimated arrival date must be consistent. Furthermore, for container and intermodal data the focus has been on actual versus estimated arrival, when instead reliability of the data is key.

She stated the Subcommittee is continuing to explore data availability with key providers and that potential future recommendations may shift to alternate sources of provided data to align with findings of the MTDI. They will also review pilot opportunities to align with previous data recommendations.

The NSAC Chair provided further comments to the group on the Subcommittee's work, stating that the group continues to work through feedback on their recommendations received at the Q2 2023 meeting to make any recommendations clear. This feedback focused on shifting responsibility of ocean carriers in providing certain data to their suppliers if there are delays or inconsistencies in the data provided. The group is making sure they hear these comments and that they use them to align their continuing work across recommendations and with Commissioner Bentzel's MTDI project to ensure they meet the needs of all the nation's shippers.

Fees/Surcharges Subcommittee Discussion

The Subcommittee Chair, Rich Roche, reviewed the progress and status of the Subcommittee and their recommendations thus far. He noted that the NSAC submitted comments on the FMC's Notice of Proposed Rulemaking regarding detention and demurrage, suggesting the FMC tweak the definition of demurrage to include all land storage, and that they compel rail operators to invoice ocean carriers directly as the properly contracted party. These recommendations were passed in the prior NSAC meeting and submitted to the Commission following that meeting.

The NSAC Chair asked the Subcommittee what else they are currently contemplating in terms of potential future recommendations while they wait for clarity from the FMC. In response, Mr. Roche stated that they are waiting to see which way the FMC goes on the recommendations. He further stated that these issues have been a thorn in the side of the shipping

public and addressing them would go a long way towards removing charges that do not incentivize the free movement of cargo. The subcommittee, for now, continues to focus on fees and surcharges. One area they may look at is premium surcharges to get one's cargo back on the ship.

Chassis Subcommittee Discussion

Debb Minskey from the Chassis Subcommittee shared that the group continues to hold discussions with stakeholders about export chassis at rail providers. This is expected to continue over the next few weeks as the Subcommittee continues their fact finding before formulating any potential recommendations.

Other Committee Considerations

In final comments Mr. Symonanis stated that as the Committee moves into 2024, they want to ensure optimal efficiency. Members want to ensure a clear path forward for the Committee and assume that their work is appropriately divided among the members. At the same time members want to ensure the Committee continues performing at a high level as there is some turnover in membership. The goal of the NSAC is not simply to put out recommendations each meeting, these should be done judiciously. He recognized all the work that has been done thus far on key issues and everyone's commitment to the work which has culminated in the eight recommendations put forward by the Committee. The Chair appealed to the public, asking for their comment as the Committee looks to the next steps in their work.

Mr. Symonanis reminded everyone that the Q4 2023 meeting is targeted for mid-November, and will take place in Washington, D.C. Members of the public were thanked for their participation at the last D.C. meeting.

Mr. O'Brien highlighted a key take away from Commissioner Dye's comments, that there is no jurisdiction for the FMC over rail demurrage. He noted that the STB has said something similar. This situation does not make either the FMC or STB bad, but he believes that it is wrong. He noted that this is a blind spot in the system which the Committee has brought to light, and that Congress should rectify it. Additionally, shippers are facing issues ahead with charges from third parties with whom shippers have no contractual relationship, such as clean cargo fees. These issues may come up in future discussions.

Public Comment Period

No commentors from the public were present at the meeting. The DFO stated that no comments can be taken virtually during the meeting, and no emailed comments were received prior to the meeting.

Closing Remarks

Mr. Symonanis acknowledged the challenge of the work done on the issues addressed by the Committee given their complexity and speed with which they have been addressed. In the

past 14 months, the Committee has put forward eight recommendations which are very focused and deliberate in dealing with the long-standing issues faced by the ocean transportation system. He stated that while the Committee may not always have a recommendation to put forward to the FMC, the group should stay focused and open to dialogue from other members that are a part of the ocean supply chain. The Chair thanked everyone for their long-term commitment to the work of NSAC.

The Committee Chair thanked NSAC member Scott Fremont and Target for hosting today's meeting and then concluded the meeting.